

First ASEAN Regulatory Reform Symposium

Makati City, Philippines

23 July 2012

SUMMARY OF PROCEEDINGS AND RECOMMENDATIONS

August 2012

First ASEAN Regulatory Reform Symposium: Manila 23 July 2012

Summary of Discussions

Introduction

The symposium was undertaken as part of a large project focused on the potential to develop an ASEAN-level regulatory reform program. It follows the first ASEAN dialogue on regulatory reform, which was held in 2011 and focused on sharing member country experiences of reform initiatives. It was determined at the time of the initial dialogue that an important focus of this symposium should be on reform activity in the logistics and supply chain connectivity sector. This reflects, in large part, the strongly export-oriented nature of many ASEAN member countries' economies.

Regulatory reform is widely identified as a means of enhancing economic competitiveness and performance, benefiting consumers and citizens and favouring the development of good public governance practices. Within the specific ASEAN context, regulatory reform has particular potential to assist Member States in meeting the challenges of global competition and, more broadly, can support progress in relation to all of the "four pillars" of the ASEAN Economic Community (AEC).

The specific purposes of the symposium were to enhance ASEAN Member States' knowledge and understanding of strategies, issues and approaches in relation to regulatory reform, both in terms of specific activities being undertaken among member countries and, more broadly, in terms of the best practices that have been identified as a result of the extensive experience of a range of OECD Member countries.

The symposium therefore included presentations covering reform experiences in relation to logistics and supply chain connectivity in three Member countries, a fourth presentation covering regulatory reform experience in the transport sector in Australia and a presentation on the use of *de minimis* exemptions from customs procedures (including collection of consumption taxes). In addition, a speaker from the OECD's Regulatory Policy and Governance program outlined the OECD's regulatory reform best practices. Finally, a panel discussion and plenary session sought to identify key lessons and opportunities for the development of an ASEAN regulatory reform program, drawing on the day's presentations and discussions.

1. An ASEAN perspective on regulatory reform

H.E. Mr Adrian S. Cristobal, Jr.

Mr Cristobal briefly discussed the first ASEAN regulatory reform dialogue, held in 2011, and highlighted the fact that it had focused on the sharing national experiences and, in particular, on initiatives in the areas of transport, logistics and investment facilitation, determining that the transport and logistics sector should be a key focus for this year's symposium.

The "four pillars" of the AEC were highlighted, being

- The development of a single market among Member countries;
- Improvement in the competitiveness of the region;
- Promotion of broad-based and equitable development; and
- Enhancing the degree of integration into global economy of ASEAN economies.

Well-designed regulatory reform programs operating both at national and ASEAN levels are needed in order to ensure the achievement of these goals.

The context is one in which there have been major tariff reductions achieved throughout ASEAN since the early 1990s, with general tariffs declining from an average level of 13% to around 1% over this time. Large rises in export volumes have resulted. Moreover, the Information, Communications and Technology (ICT) sector has become the largest single source of export income across ASEAN, accounting for about 25% of total.

Reform of the policy and regulatory framework within member countries has been a major factor in achieving this substantial improvement in the degree of integration of their economies into international economy. However, while recent research indicates that the level of competitiveness of many ASEAN economies exceeds that of most developed countries, it also shows that there has been no progress in last 5 years. This is a cause of concern and indicates the need for a fresh wave of market based reforms to ensure ASEAN's economies can effectively meet the challenges of globalisation and the current uncertain international economic environment.

Achieving this result will require that domestic reform programs are sustained and expanded, at the same time as an ASEAN regulatory reform agenda is developed and implemented. While there have been some doubts as to the viability of pursuing such an agenda at ASEAN level, Member countries should take heart from the progress made to date in achieving reform in many individual member countries.

2. Regulatory Reform: What, Why, How and Outcomes.

Mr Gregory Bounds, Deputy Head, Regulatory Policy and Governance Division, OECD

Mr Bounds highlighted the fact that the OECD had had a regulatory reform program in place for around twenty years, with some individual Member countries having still more extensive experience. His presentation set out the best practices that have been identified as the result of this experience in analysing and comparing Member country experiences.

While regulatory reform is commonly seen as a means of improving economic performance, it actually achieves benefits in terms of a wide range of government policy objectives. In addition to controlling regulatory costs and improving productive efficiency, particularly in the small and medium enterprise (SME) sector, these include improving social welfare through more effective policies, improving the rule of law and enhancing transparency, thereby aiding the fight against corruption and enhancing participative democracy.

A key focus of regulatory reform is necessarily on promoting competition and the spread of open markets. Economic development has been found to be best achieved by encouraging market entry and policies that support competitiveness.

The need for regulatory reform program arises from the observation that all governments have enduring difficulties in controlling both the quantity and quality of regulation. These problems are the result of several factors. Several relate to government capacities: the skills and resources needed to ensure problems are correctly analysed and the likely impacts of regulatory intervention are properly understood in advance are frequently lacking, while these issues are compounded by problems in co-ordinating government activity effectively across many sectors of policy, notably between levels of government where regulatory responsibilities are shared. These problems within government are compounded by external factors: Vested interests will almost always work to block reforms that will affect them negatively, while political incentives favouring short-term approaches also tend to undermine the will to achieve reform.

However, the need for reform becomes progressively more acute over time: as the economic and social environment within which regulation operates changes, so existing regulation is likely to become less effective and efficient in achieving its objectives. Improvements over time in our understanding of how to regulate effectively also drive the need to reform existing regulation.

It is important to understand that regulatory problems arise at all stages of the regulatory cycle. The regulatory cycle essentially involve the following stages:

- Assessing policy issues and determining whether there is a sufficient case for regulation, or some other policy response;
- Designing and developing regulatory standards;
- Implementation and enforcement of the resulting regulation; and
- Monitoring and evaluation.

A fully developed regulatory reform program should reflect an understanding of this regulatory cycle and include elements that seek to improve regulatory effectiveness and efficiency at each stage.

Regulatory reform is a dynamic and long-term process. Most governments have commenced with relatively limited programs and have broadened and deepened them over time, as expertise has been accumulated and a wider constituency for reform has developed. Reform of the existing regulatory structure is not a "once only" endeavour: rather, constant change in the regulatory environment and improving understanding of regulatory dynamics means that reform must be a continuous process.

A well-functioning regulatory reform program should combine *systemic and strategic reform*. *Systemic reform* refers to the need to adopt explicit reform policies with clear objectives, establish the use of key tools such as regulatory impact assessment and standardised consultation processes and adopt key institutional supports, such as regulatory reform oversight bodies to monitor progress and advocate for reform, and independent regulatory agencies to implement regulation.

Strategic reform refers to programs that identify priority sectors for reform and act to implement regulatory change in those sectors as a matter of priority, as well as targeted programs to reduce regulatory costs - for example, through administrative burden reduction or competition assessment.

Box: The OECD Council Recommendation

The OECD's best practices on regulatory reform are summarised in the *Recommendation of the OECD Council on Regulatory Policy and Governance*, which states that member countries should:

- apply an explicit policy for regulatory quality;
- develop regulations through communication, consultation and engagement;
- empower institutions for regulatory oversight ;
- integrate regulatory impact assessment;
- review and reform the regulatory stock;
- assess regulatory reform programmes;
- co-ordinate the activities of regulatory agencies;
- establish effective review processes;
- apply risk regulation;
- promote regulatory coherence across levels of government;
- foster regulatory management capacity at sub-national government; and
- pursue international regulatory cooperation.

Successful regulatory reform programs must have strong and sustained support from the highest levels of politics, since strong resistance can be expected, both from vested interests that stand to lose from reform and from within the administration. Reform programs must also be provided with adequate resources and a long-term perspective adopted: successful regulatory reform requires sustained effort. The scope of regulatory reform should include the adoption of essential policies, tools and institutions, as well as a program of structural and micro-economic reform.

Reform policies should have a dual focus, involving both improvements to the process for making new regulation and strategies for reviewing existing regulation.

Reform tools are needed to systematically promote regulatory quality, efficiency and effectiveness. These include:

- Regulatory Impact Analysis (RIA) to improve the evidence basis for regulatory decisions (answering the questions "Is regulation necessary?" and "Will it be effective?");
- The evaluation of alternatives to regulation to best address the policy problem;
- Public consultation strategies to promote transparency, accountability and improve regulatory design;
- Review and reform of existing regulations; and
- Red tape reduction programs to reduce administrative and compliance costs.

Regulatory institutions must be well designed and resourced, to ensure that regulatory reform policies are effectively implemented. In particular, this requires the use of:

- Regulatory oversight bodies with whole of government responsibility to advocate the benefits of reform, perform a gatekeeper role on quality of RIA; provide training and guidance to regulators and advocate for the reform policy;
- Ministerial accountability for regulatory policy - whether to an individual Minister or a committee;
- Programs to reduce regulatory/administrative burdens; and
- Carefully designed independent regulators. These are essential to ensure that regulatory decisions are consistent and free of political interference and regulatory capture, thus generating confidence in the regulatory system and favouring market entry, investment and entrepreneurialism.

The promotion of competition should also constitute a key part of the regulatory reform program, given the fundamental role of efficient, competitive markets in yielding strong economic growth and high levels of consumer welfare. This implies integrating RIA and competition assessments as far as possible.

Regulatory reform is a long-term undertaking, which requires sustained effort and significant resources. However, countries with mature programs of reform have usually commenced with limited programs and expanded these over time. Experience indicates that significant and worthwhile benefits can be attained during the early stages of reform, though maximum benefits will only be achieved in the longer term. Building a supporting community of practice will be a key determinant of success, while ASEAN should also seek to learn from country experiences within the OECD and APEC contexts.

3. Regulatory Reform in Logistics: the Australian Experience

Mr Paul Sullivan, General Manager, Strategy and Communications, National Transport Commission (NTC)

The NTC is a body jointly established by Australia's Federal and State/Territory governments to drive regulatory reform in the transport sector. The Australian transport context is one in which there were substantial regulatory barriers to overcome to achieve a single market. This reflects the fact that the Australian constitution gives the States and Territories responsibility for transport.

The NTC was established in 1991 to recommend national regulatory standards in the transport field, which would then be adopted by each State and Territory, by agreement. It is an example of "co-operative federalism", where constituents agree to act together to harmonise their regulatory arrangements. Importantly, given the challenges in getting agreement among nine jurisdictions, provisions are in place for a "qualified majority" voting system. The involvement of the Council of Australian Governments – a council of Australia's first Ministers – since 2006 has been important to maintain the political momentum for reform.

National reform has evolved from a focus on the harmonisation of technical rules and standards to working to achieving modernised and better integrated national laws across the road rail modes, as well as supporting intermodal transport. A key principle has been to look along the whole supply chain in order to understand the regulatory environment and what change is needed. For example, rather than focusing enforcement directly on truck drivers, the "chain of responsibility" concept seeks to address the causes of poor driving behaviour, by ensuring that those that create incentives and pressures for law-breaking by drivers are also subject to sanction.

NTC has found that the results of reform often fall short of expectation and, where this occurs, it is usually because inadequate attention has been paid to the implementation phase of the process. Designing better regulation is of limited value if it is not adequately implemented and enforced. Bodies charged with reform must be accountable for its outcomes, not simply for having developed reformed regulation. NTC's strategic plan, work program and each reform project are now underpinned by a "theory of change" and a Program Logic, which links its activities to outputs, objectives and outcomes. This process - which is based on the concept of understanding the regulatory environment, noted above - helps ensure the reform process is integrated and that there is a strong focus on final outcomes. Reform is most successful if it is driven by clear strategic logic and strategies.

Major current reform areas for the Australian transport and logistics sector are:

- Market based reform, including increasing private involvement in provision of infrastructure assets;
- Creating a seamless Information Technology (IT) infrastructure;
- Creating a seamless national registration and licensing system;
- Ensuring adequate long-term planning for ports infrastructure and the growth of the freight task; and
- Strategic planning for the impact on cities of growing transport and logistics tasks.

Another key theme is the need for the various governments within Australia to work more collaboratively. An example is that a National Ports Strategy will shortly be announced to support better planning of infrastructure needs and regulation in this area. The strategy is underpinned by five key propositions:

- Recognising the role of ports authorities as managers of strategic economic assets;
- Ensuring integrated long-term planning is being undertaken for the future of the ports sector;
- Enabling co-operation between asset owners to address supply chain problems, even where exemptions from competition law may be required;
- Using technology to "work smarter" and obtain better outcomes; and
- Recognising the high cost of port and other infrastructure assets and ensuring they are efficiently and fully exploited.

In conclusion, the reform agenda in transport and logistics must continue to evolve. The key requirements to support the future reform agenda are national institutions supported by good governance, new public sector skills and a strong commitment to leading practice in reform.

4. Effective Reform in Supply Chain Connectivity and Logistics: the World Bank Perspective (Based on the Indonesian Experience).

Mr Henry Sandee, World Bank

Mr Sandee's presentation drew on the Indonesian Government's experience in relation to reform of the logistics sector and noted that countries embarking on such reforms could obtain substantial assistance by making use of the World Bank's *Logistics Performance Index*.

The Logistics Performance Index (LPI)

The Index is constructed as a means of assisting countries to identify priority areas for improvement within their logistics sectors. It is based on a simple indicator, developed from survey responses from logistics services providers that trade with the given country. The survey requests respondents to give ratings for performance on particular factors on a 5 point scale.

The indicator looks at the international dimension of the logistics sector only. Its purpose is to identify areas of weakness and priorities for addressing them. The six areas of performance highlighted by the indicator are:

- Efficiency of the clearance process;
- Quality of trade and transport infrastructure;
- Ease of arranging competitively priced shipments;
- Logistics competence and quality of logistics services;
- Tracking and tracing; and
- Timeliness.

The survey is repeated on a three-yearly basis. Most countries's rankings relative to each other are remarkably stable over time. Indonesia is one notable exception, having achieved significant improvements in recent years: from an overall position of 75th to 59th between 2007 and 2012 and, simultaneously, from eighth to sixth among lower-middle income countries. Only Cambodia has achieved a larger relative improvement over the period.

Indonesia's reform program

This improvement reflects the Indonesian Government's recognition of the economic importance of the logistics sector and its willingness to address key challenges such as the bottlenecks between industrial export zones and Jakarta port. The Government has also realised that a co-ordinated response is needed and has therefore established an inter-departmental "de-bottlenecking team". In addition, there is a Logistics Directorate within Ministry of Trade.

The Indonesian Government has published a broad-scale plan for reform of the logistics sector, with different agencies taking the lead role in respect of different initiatives. Perusal of the plan makes clear the complexity and the size of the task. It includes:

- Proposals for the “urgent” reform of over 30 regulations;
- A 20 page Logistics Directorate plan;
- 720 connectivity projects; and
- 120 actions in the logistics blueprint.

A key issue determining the success of the plan is that of how to co-ordinate all this activity.

Current reform issues

A closer review of Indonesia's performance on the Logistics Performance Index shows that, despite its strong overall performance, there is room for further improvement in respect of the infrastructure quality and border control agency performance dimensions of the LPI. Clearly then, the index highlights areas of priority for reform, even though it is based on a very simple tool.

There are in general many areas of possible regulatory reform to reduce logistics costs: port efficiency, transport links, warehouses, and establishment of dry ports. The World Bank team in Indonesia presently concentrates on improving port efficiency by reducing import dwell time (i.e. the time container spends in the port) and optimising the *dry ports* established in the industrial zones. This work has highlighted uneven performance within this specific part of logistics performance, thus:

- Customs clearance itself is fast, however its requirements are stringent, cumbersome and time consuming. Payments and clearance by other agencies are a prerequisite for Customs clearance and this "pre clearance" phase is taking longer;
- It appears that there are systems issues, with current systems unable to cope with the doubling of the number of imported containers in the last few years; and
- Modernization of the performance of the border agencies therefore requires regulatory reform.

However, recognition of the need for such reform gives rise to clear trade-offs - for example, should a very well-designed and "waterproof" process be adopted if it also contributes to longer overall dwell time? Some potential regulatory changes that have been identified, that could address these strategic areas of concern include:

- Integrating the operations of border agencies;
- Introduce flexibility in changing the manifest;
- Consider clearance at the dry port as an asset and not a threat to customs processes; and
- Exploiting the potential for dry ports to reduce the dwell time of containers in the ports.

Currently, while dry ports operate as a dedicated zone for integrated checks by all border agencies, regulatory impediments mean that it currently handles only 2 percent of imports. A key issue may be that there is no coordinating agency responsible for both port and dry port

In sum, Indonesia's logistics performance continues to improve and is being supported by a wide-ranging reform program. However, the use of the World Bank's logistics indicator points to priority areas for further action and highlights the need for greater attention to be paid to achieving a more co-ordinated approach to reform. Only if this is done and the remaining weak-points are addressed successfully will the full benefits of the reforms implemented to date be attained.

5. Regulatory reform in Supply Chain Connectivity and Logistics: the Thai Experience

Professor Ruth Banomyong, Thammasat University, Thailand

Regulatory reform in logistics is seen in Thailand as a major trade facilitation initiative. A specific Logistics Development Plan was in place from 2007 to 2011, with the objective of making Thailand a regional centre of business and trade through development of a "world class" logistics system through improved cost efficiency, responsiveness to customers, reliability and security. Since 2001, the output of the logistics sector has risen steadily, while logistics costs as a proportion of GDP have declined. This shows that the plan was implemented in the context of an already positive performance trend and has supported that trend.

Logistics issues involve a range of key factors and players, including physical infrastructure, institutions (e.g., government agencies such as customs), shippers and consignees and service providers. Perspectives on what logistics reform involves necessarily differ widely between these groups. This inevitably creates important challenges in developing an integrated reform program.

Developing indicators

One key focus, in the Thai context, has been on the identification of performance indicators to both track progress and identify priorities for further reform. These include:

- The trend in logistics costs as a % of GDP over time;
- Trend in time taken to complete import/export requirements;
- Trend in number of documents required;
- Trend in dollar cost per container imported/exported; and
- The absolute values in respect of the above dimensions, benchmarked against acknowledged leaders (e.g., Singapore).

In addition, some benchmarks specifically focused on the performance of logistics service providers have also been identified and applied. These include:

- Average order cycle time elapsed;

- Percentage of orders that are delivered in full on time;
- Percentage of orders fulfilled accurately;
- Time taken to deal with customer queries;
- Customer complaint rate; and
- Average cycle time for customer return.

However, while the information provided by these indicators is an important input to the design of reform programs, it is important to avoid an undue focus on the indicator results: they must be interpreted correctly by reformers, who must maintain a clear focus on the larger picture.

Main issues and initiatives for reform

The work undertaken to date shows that, in the Thai context, physical infrastructure is not the major bottleneck for logistics; rather, it is institutional in nature. There are numerous bodies involved in the regulation of the sector, who tend to have differing views and priorities in relation to reform. The fact that there is a substantial degree of overlap between the areas of responsibilities of many of these agencies further exacerbates this problem. Reform initiatives that have been developed have tended to come from individual agencies, and reflect their specific priorities, rather than being the product of a holistic view of the sector and its challenges. Another institutional issue is that any international agreements (e.g. ASEAN level agreements) require ratification by Parliament before coming into effect.

Thus, co-ordination has been identified as a key challenge in ensuring a successful reform program. Connectivity within the country and between the agencies must be a starting point— it is very difficult to have successful ASEAN wide co-ordination without this. A key initiative in this regard has been the establishment of a dedicated taskforce - the National Logistics Committee.

A second key step is the “single window” initiative. This program aims to integrate the licence/permit issuance systems of the various agencies and create a single point of contact for import and export transactions. It is strongly technology driven, but will also require amendment of a wide range of laws and regulations to enable its success. It is scheduled to be completed by 2015 and can be seen as the latest stage in a series of initiatives that began with the adoption of electronic communications on customs matters, starting in the late 1990s.

In sum, the Thai reform experience highlights the the long-time horizons over which reform must be sustained to be successful and the need for a strategic, or holistic, focus to be maintained. Priorities must be set; and progress measured according to robust benchmarks. Moreover, appropriate institutional structures must be in place to achieve and maintain high levels of co-ordination between agencies.

6. Regulatory reform in Supply Chain Connectivity and Logistics: the Philippine Experience

Mr Henry Basilio, REID Foundation, Philippines

Mr Basilio identified and discussed two major reforms in the logistics sector in the Philippines. These were the establishment of the "Subic-Clark-Batangas Logistics Corridor" and the promulgation of a "Roll on, Roll off" (RoRo) shipping policy.

Subic-Clark-Batangas Logistics Corridor

This concept is the result of decisions by the National Competitiveness Council, taken in 2009, which seek to create "economic magnets" outside metropolitan Manila. The regions which the corridor spans are the fastest growing outside the Manila area. There are two major new international port facilities, at Subic and Clark and a new toll network to connect assets within the corridor is under construction.

Economic analysis has indicated that substantial savings in terms of both time and transport costs will be achieved. However, an important additional requirement in order to ensure that the full benefits of these infrastructure investments are attained is the adoption of a government policy to encourage decentralisation of cargoes from Manila to the two other major ports. To date, such a policy has not been adopted.

RoRO Shipping Policy

Because the Philippines is an archipelago country, another crucial leg in achieving inter- and intra-country connectivity is the development of adequate sea-links between the various islands. In the past, the absence of such links has been a substantial cause of isolation and economic under-development.

The approach taken to reform has been to favour the "Roll on Roll off" model of shipping. RoRo is a mode of shipping designed to carry *rolling cargoes* which do not require cranes for loading or off-loading (e.g., cars, buses, trucks, chassis-mounted containers, etc.) because they simply roll on and off the ship. RO-RO has several advantages over traditional shipping methods, including:

- elimination of cargo handling labour and equipment;
- elimination of commodity classification;
- reduction in the amount of time required to be in a port; and
- consequent reductions in sea transport costs and improvement in service quality;

A variant of RoRo, involving the use of "chassis trailers", rather than moving whole trucks, can add further advantages, such as:

- elimination of left hand vs right hand drive issues for trucking;
- elimination of people movement and driver licensing issues; and
- elimination of truck registration issues.

The RoRo reform has been adopted nationally, so has changed the trucking business model substantially. It has allowed the conversion of private, non-commercial ports into commercial RoRo

port operations. The RoRo port system is now regarded as an integral part of the national highway system.

By reducing the number of steps involved in transporting goods by sea from nine, using traditional port facilities, to three under RoRo, very large cost savings have been achieved. These have been estimated at 57% for live cattle, 27% for fish and 23% for beer, for example. More broadly, REID Foundation research has found that RoRo is:

- Faster: Loading/unloading is 2.5 times faster than with conventional shipping, while RoRo can cut sailing time in half;
- Cheaper: The door-to-door cost of RoRo is 20% lower than with conventional shipping and 70-80% lower than for air freight; and
- Saves infrastructure costs: There is no need for gantry cranes (typically costing \$8-10 million), while port development costs are also much lower. For example, RoRo ships typically have a 6.5 metre draft, compared with 10-11 metres for conventional ships.

One specific example of the result of implementing RoRo for large private firms is that Nestle reduced its number of distribution centres throughout the Philippines from 34 in 1990 to 3 in 2010, after the widespread adoption of RoRo. In effect, under the new model, its trucks became "rolling warehouses".

Enhancing ASEAN connectivity

The adoption of RoRo across ASEAN was agreed by leaders as part of the 17th Master Plan, adopted at the 2010 ASEAN summit. It has been adopted as one of 15 "flagship" projects and can be expected to have a major impact on ASEAN connectivity. It is also notable that there are numerous RoRo links also in place across the region, for example between Hakata (Japan) and Shanghai and between Hakata and Busan (South Korea). China and Vietnam also have RoRo links, while China and South Korea signed a memorandum of understanding to establish such a link in 2010.

7. The Economic Impact of Increased *de Minimis* Thresholds on ASEAN Economies

Mr Jeffrey Rae, Chief Economist, ITS Global

Mr Rae explored the potential benefits to ASEAN economies of applying larger *de minimis* thresholds for exempting imports from customs processes and the application of consumption taxes. A *de minimis* regime can be defined as one which provides imports that have a value below a given threshold with streamlined customs clearance, exemptions from customs duty, exemptions from other indirect taxes, or some combination of these benefits. Tax exemptions recognise that the cost of collecting small amounts of tax will often exceed the revenue obtained.

The use of *de minimis* regimes facilitates trade by reducing transactions costs on low value items. It is recommended by the WTO, the OECD, the WCO and the ICC and has been endorsed as part of

ASEAN's Supply Chain Connectivity Framework Action Plan, which aims to achieve a minimum *de minimis* threshold level of US \$100 by the end of 2012 in all 10 participating countries.

De minimis in ASEAN

Current *de minimis* thresholds in ASEAN countries vary widely - from less than US\$1 (the Philippines) to around US\$150 (Malaysia). Coverage also varies widely, from some schemes that apply only to air express to others that cover all modes. Some schemes provide exemptions from both customs duty and VAT, while others do not.

The specific design of a *de minimis* regime greatly affects the balance of its economic benefits and costs. Modelling based on 12 APEC countries has been carried out by ITS Global. It considers resource savings in government administration, reduced business compliance costs and reduced goods transit time as benefits, weighed against the loss of tax revenues (from duties and VAT). The results show that, for the highest *de minimis* threshold, the economic benefits are at least 10 times as large as the revenue foregone, for all countries. Some 76% of the savings accrue to government administrations, while the remainder accrue to businesses. The following table summarises the ratio of benefits to costs for five ASEAN countries.

Table 1: Benefit cost ratios associated with different *de minimis* scenarios

| Country | US\$200 threshold | US \$150 threshold | US\$100 threshold |
|----------------------------|-------------------|--------------------|-------------------|
| Indonesia | 5.5 | 4.7 | 3.5 |
| Malaysia | 7.6 | na | na |
| Philippines | 6.0 | 6.3 | 7.0 |
| Thailand | 6.6 | 6.8 | 7.6 |
| Vietnam | 2.8 | 2.9 | 3.1 |
| ASEAN 5 (weighted average) | 5.6. | 5.3 | 5.6 |

Source: Modelling by ITS Global

The net economic benefits are highest in relation to the highest (US\$200) threshold and total over \$100 million annually for the ASEAN-5, with individual country benefits ranging from \$9.4 million in Vietnam to \$43.4 million in Thailand. The differences between benefit estimates for different countries reflect a range of factors, including different customs clearance arrangements, different intensities of trade in small value imports and the level of the existing *de minimis* threshold. As free trade agreements continue to spread and tariffs fall, the costs associated with *de minimis* concessions will fall, further increasing net benefits. In sum, ASEAN countries would benefit by adopting liberalised *de minimis* regimes incorporating higher exemption thresholds, exemption of goods arriving via all transport modes and exemption from all consumption taxes and customs duties.

8. Options for an ASEAN Regulatory Reform Program

8.1. The case for adopting an ASEAN regulatory reform program

The moves to achieve closer economic integration among ASEAN Member States provide one important reason for working toward the adoption of an ASEAN-level reform program: regulatory barriers to trade and economic integration more generally are likely to become increasingly important as progress toward integration is made. In addition, as Mr Cristobal points out, further progress in improving the international competitiveness of ASEAN Member States is needed, following the static performance of recent years. Regulatory reform is a potentially major driver of such improvements.

The presentations made at the symposium also suggest that much reform activity is being undertaken at present within at least some member countries and that important benefits are being achieved. OECD experience shows that regulatory reforms undertaken at one level of government can be frustrated by failures to reform at other levels. This suggests the importance of adopting an ASEAN level reform program that is complementary to national level initiatives, while maintaining the momentum of those national efforts.

The ASEAN country presentations to the symposium highlighted the pursuit of economic benefits, particularly via trade facilitation, as the key objective of the reforms being pursued. Similarly, APEC leaders affirmed, in their 2011 *Honolulu Declaration*, the importance of regulatory reform in boosting productivity, job creation and trade flows. However, both the OECD and ASEAN have pointed to the contribution of regulatory reform to the achievement of a wide range of government objectives. , the OECD has identified a number of other key benefits of successful reform, notably improving social welfare through more effective policies, improving the rule of law and enhancing transparency and participatory democracy. Similarly, APEC has highlighted the protection of the environment and public health, safety, and security, the implementation of open government and anti-corruption commitments as key elements in its regulatory reform programme. This broad range of benefits suggests that regulatory reform is able to contribute to progress in respect of all of the AEC's "four pillars".

The presentation from the World Bank showed that that organisation views successful regulatory reform as a key means of improving the investment environment and overall economic competitiveness in both low and medium-income countries. Moreover, consistent with its view of the importance of regulatory reform, the World Bank has developed a comprehensive set of indicators of countries' performance in a range of key economic areas, including logistics performance. These indicators can be used both as diagnostic tools to help target reform efforts and as measures of the effectiveness of reforms that have been implemented.

The experiences of the various ASEAN countries in implementing reforms in the logistics area suggests that they, too, have been able to derive useful indicators to assist them in directing reform and measuring outcomes. The OECD will also be administering its periodic *Regulatory Indicators*

Questionnaire in 2013 and has indicated that the questionnaire can be made available to ASEAN countries, together with appropriate support, should they wish to use it.

These factors suggest both the importance of moving to adopt an ASEAN level reform policy and the range of resources available to assist in its development. However, designing a feasible, yet effective, set of policy initiatives is clearly challenging, particularly given that few, if any, ASEAN Member countries appear to yet have systemic reform programs in place.

8.2. Designing an ASEAN reform program

OECD Member countries' lengthy experience in regulatory reform has allowed the OECD collectively to identify and elaborate key "best practice" principles for regulatory reform by evaluating and comparing Member country experiences. These principles are also reflected in the 2005 APEC-OECD Integrated Checklist on Regulatory Reform. Any ASEAN reform policy should be consistent with these principles, while recognising the specific characteristics and constraints of the ASEAN environment. The OECD points out that its Member countries have typically commenced their efforts with relatively limited reform programs, which have been broadened and deepened over time. However, speakers in the panel discussion argued that there is significant potential to leverage the extensive reform experience already accumulated, thereby "leapfrogging" some of the earlier stages, and pitfalls, of reform implementation.

Two particular OECD principles can be noted in this context. First, that there should be an explicit regulatory reform policy established, which is endorsed at the highest political level and contains a clearly specified set of policy objectives. Second, the policy should aim to balance both systemic and strategic elements. These principles are also reflected in APEC's regulatory reform strategy. Key systemic elements endorsed in the 2011 *Leaders' Declaration* are the development of a whole of government approach to the development of regulations, the use of impact assessment mechanisms, including the systematic consideration of policy alternatives and the implementation of the 2005 Checklist's principles on public consultation. At the same time, strategic initiatives were identified in respect of food safety regulation and the prevention of regulatory barriers to trade in green technologies.

The systemic aspects of a regulatory reform program are, to a large extent, related to the improvement of the processes by which new regulation is made, while the strategic elements are focused on the improvement of existing regulation. One key conceptual basis for an approach which combines these two elements relates to the process by which reform of existing regulation is undertaken: when strategic analysis identifies an area of regulation for reform, and highlights key problems with existing requirements, the systemic elements of the policy should guide the development of new, reformed regulatory requirements.

This implies that strategic, or sectorally focused, reform will be conducted in broadly systematic and consistent ways, and helps to ensure that reformed regulation will serve the identified objectives of the policy.

Elements of a systemic policy

The key elements of a systemic approach to regulatory reform comprise policies, tools and institutions. The major tools, as noted above, are:

- The use of Regulatory Impact Analysis (RIA) to improve the evidence basis for regulatory decisions,
- The evaluation of alternatives to regulation to best address the policy problem;
- Public consultation strategies to promote transparency, accountability and improve regulatory design; and
- Red tape reduction programs to reduce administrative and compliance costs.

The first three of these have also been identified as fundamental to reform by APEC leaders in their *Honolulu Declaration*. Moreover, many of the initiatives highlighted in the presentations from ASEAN countries during the symposium highlighted a number of initiatives that can be characterised as being focused on reducing administrative, or "red tape" costs. For example, the "single window" program being pursued in Thailand is a clear example of such a policy. Similarly, the presentation from Indonesia highlighted the potential benefits of better integrating the operations of border agencies and providing regulatory flexibility in relation to manifest changes. This suggests that an effective element of an ASEAN reform program would be to draw upon this experience and broaden the initiatives taken in this area, achieving more consistent results across Member countries. Moving toward adopting more similar approaches to administrative compliance issues could itself tend to be trade-enhancing, by increasing the degree of predictability of various administrative procedures for businesses trading across ASEAN border. Given the above, consideration could be given to adopting an administrative burden reduction initiative as an initial element of an ASEAN regulatory reform policy.

Consideration could also be given to the development of systematic and broadly consistent consultation policies as an early inclusion in such a policy. Enhancing public consultation could have a number of important positive impacts in the context of ASEAN regulatory reform. First, the use of more open and consultative approaches to developing new regulation necessarily enhances public participation and, as a result, enhances the legitimacy of the resulting regulation.

Second, effective public consultation has been found in OECD countries to constitute an important means of identifying practical problems with regulatory proposals, including unanticipated effects, higher than expected compliance costs and negative views of the acceptability of proposed regulation among regulated parties or other sectors of the public. Thus, a sound consultation process can be a relatively cost-effective means of gathering important information that will help to improve the quality of regulatory proposals. This function of consultation can be extremely important where capacity constraints mean that the ability to conduct formal RIA is limited. Alternatively, where RIA is being conducted, consultation constitutes an important complement, helping to improve the database for analysis and hence enhance outcomes.

Third, another option would be to investigate the potential to adopt RIA programs on a pilot basis in a number of ASEAN countries, as a basis for developing a network which would enable similar

countries to share experiences and mutually develop capacity in this key area for ensuring the quality of new regulation. The experience of the World Bank in supporting the implementation of RIA programs in middle and even low income countries could be an important resource in this regard, while the OECD is also a crucial source of expertise on RIA best practices.

Finally, consideration could be given to the potential benefits of the development of a mutual recognition program. This initiative has been of substantial importance in both the European Union and within Australia. It relies on the concept that a good that can legally be sold in one participating country should be able to be legally sold in all other participating countries, regardless of whether it fully meets their specific product standards regulation. This mechanism has been used as an effective means of maximising trade flows in the short term and has the advantage of not requiring uniform regulatory standards to be agreed as a condition of freer trade flows. It is therefore less resource intensive and provides more rapid results than alternatives based on regulatory standardisation, or harmonisation.

Developing a strategic focus

It is clear from the presentations from ASEAN countries during the symposium that most reform effort to date has been focused on improving economic performance, particularly in relation to trade facilitation. A key message from the OECD is that an effective competition policy is fundamental to the achievement of good economic performance and that a core focus of regulatory reform should be on maximising the role of competition in the economy. To this end, the OECD recommends combining competition analysis and regulatory impact analysis.

An important example of this approach from within the OECD is that of Australia, which undertook a strategic review of all regulations that impeded competition over a period of approximately 10 years, from 1996. The program resulted in major legislative change and has been estimated to have led to substantial economic benefits, in terms of higher GDP growth over time.

A focus on removing regulatory restrictions on competition could potentially constitute a central element of the "strategic" arm of an ASEAN reform policy. The OECD's Competition Assessment Toolkit could constitute an important resource in this regard, as it seeks to enable non-specialists to identify aspects of legislation that are likely to raise significant competition concerns, thus constituting an important "triage", or sorting, tool when applied to existing legislation. In addition, the extensive experience generated in Australia in administering reform programs aiming to remove impediments to competition could potentially be drawn upon to guide ASEAN efforts.

However, the adoption of a broad-ranging competition assessment process would involve significant resource inputs and would potentially constitute an alternative to the adoption of more sectorally focused programs. Were the alternative of focusing on economically important sectors to be preferred as the basis for the "strategic" element of a reform policy, research would need to be undertaken to arrive at a shortlist of potential sectors. The results of the symposium indicate that, there is significant activity underway in the logistics area, suggesting the opportunity to broaden this work to embrace a larger number of ASEAN countries and attempt to adopt more systematic approaches.

Alternatively, ASEAN Member States could be requested to nominate key sectors for review, with a focus on those which had substantial impacts on economic development and trade and in which there appear, a priori, to be significant regulatory impediments. The ASEAN secretariat, possibly with assistance from the World Bank or expert consultants, could review the views put forward by member countries with a view to making recommendations to be assessed by the HLTF-EI. The recent nomination of the food safety and green technology sectors as areas of specific sectoral focus for regulatory reform by APEC leaders also suggests that consideration should be given to adopting these sectors as part of the strategic element of any ASEAN reform program.

Information gathering and analysis

The preceding discussion highlights a number of potential inclusions in a "first stage" ASEAN regulatory reform program, based on the material presented at the Symposium, including that relating to OECD's insights into successful regulatory reform. However, a key element of successful public policy is that it be *evidence based*. This implies that the development of a regulatory reform program should be based on additional research into the current state of play in relation to the nature and quality of regulatory processes in Member States.

The above discussion has highlighted a number of practical means by which this research can be conducted. In particular:

- Comparative analysis of the World Bank indicators could be conducted to identify key areas in which most ASEAN countries perform relatively poorly. This analysis could be used to develop appropriate focus areas for reform; and
- ASEAN countries could participate in the OECD's Regulatory Indicators Survey in 2013. Analysis of the results of this survey, which assesses indicators of the quality of regulation making and regulatory reform processes, would provide a rich data source to assist in the direction of ASEAN reform programs.

An appropriate process for proceeding to develop an ASEAN reform program may be for the HLTF-EI to approve a short-list of potential inclusions, to be derived from the above and from further desk research, with further detailed research using the above tools being used to finalise a draft program for approval.